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ATTORNEYS FOR DEFENDANT ARISTA
NETWORKS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**JOINT SUBMISSION RE ANALYTIC
DISSECTION CATEGORIES SUITABLE
FOR DECISION WITHOUT
EVIDENTIARY HEARING**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

As the Court directed in chambers on September 9, 2016, Plaintiff Cisco Systems, Inc. (“Cisco”) and Defendant Arista Networks, Inc. (“Arista”) respectfully submit this listing of analytic dissection issues that the parties believe the Court can decide based on written submissions accompanied by declarations, without an evidentiary hearing. The parties have met and conferred on these issues as the Court directed. Section I below lists the issues that both parties agree the Court can decide without an evidentiary hearing. Section II lists additional issues identified by Arista. Section III lists additional issues identified by Cisco.

For ease of reference, this pleading refers to the issues identified in Arista’s Response to Cisco’s Submission Re Protectable Elements, ECF 585.

I. ISSUES THAT THE PARTIES AGREE THE COURT CAN DECIDE WITHOUT AN EVIDENTIARY HEARING

The parties agree that the Court can decide the following issues without an evidentiary hearing:

1. Item III.A.1. in ECF 585—Pre-existing industry terminology.
2. Item III.A.3 in ECF 585—Unprotectable words and short phrases.
3. Item III.A.4 in ECF 585—Conventional command syntax that Cisco copied from other sources.
4. Item III.A.6 in ECF 585—Any purported selection or arrangement of commands that is not grounded in Cisco’s actual works or that Cisco did not disclose in discovery.
5. Item III.B. in ECF 585—Unprotectable Aspects of the Asserted Hierarchies
6. Item III.C. in ECF 585—Unprotectable Aspects of the Asserted Modes and Prompts
7. Item III.D. in ECF 585—Unprotectable Aspects of the Asserted Command Responses (excluding “elements dictated by external constraints”).
8. Item III.E. in ECF 585—Unprotectable Aspects of the Asserted Help Descriptions (excluding “elements dictated by external constraints”).
9. Item III.F. in ECF 585—Unprotectable Aspects of the Asserted Manuals.

II. ADDITIONAL ISSUES IDENTIFIED BY ARISTA

Arista believes that the Court can also decide the following two issues without an evidentiary hearing:

1. Item II in ECF 585—Identification of Cisco’s Asserted Works.
2. Item IV in ECF 585—Scope of Copyright Protection

Arista has not seen the “declarations” Cisco intends to submit on these issues and the issues listed in the previous section. To the extent that the Court concludes that evidence submitted by declaration raises factual questions about any issue that cannot be resolved based upon documentary evidence, or that credibility of witnesses is relevant to resolve any of the issues, Arista submits that the Court should hear live testimony and cross-examination before resolving such issue(s).

III. ADDITIONAL ISSUES IDENTIFIED BY CISCO

Cisco believes that the Court can also decide the following issues without an evidentiary hearing:

1. All issues in Item III.A – F in ECF585, including:
 - a. Item III.A.2 in ECF 585—Elements dictated by external constraints.
 - b. Item III.A.5 in ECF 585—“Commands” that are not accepted by any Cisco or Arista switch.¹
 - c. Item III.D. in ECF 585—Unprotectable Aspects of the Asserted Command Responses (including “elements dictated by external constraints”).
 - d. Item III.E. in ECF 585—Unprotectable Aspects of the Asserted Help Descriptions (including “elements dictated by external constraints”).

Cisco believes that the following issues are not issues specific to analytic dissection, and

¹ Cisco’s pending Motion *In Limine* No. 4: Cisco’s Motion To Exclude Untimely Disclosed Non-Infringement Theory, ECF No. 535, seeks to exclude Arista’s reliance on this theory of non-infringement. Should the Court grant Cisco’s motion, Item III.A.5 in ECF 585 will be moot as excluded; to the extent Cisco’s motion is denied in whole or in part, Cisco believes the Court can decide any remainder of Item III.A.5 without an evidentiary hearing.

1 thus are not appropriate for resolution on the parties' forthcoming submissions or at an evidentiary
2 hearing addressing analytic dissection. However, because Arista raised these issues in its
3 Submission Re Protectable Elements, ECF 585, Cisco will address them in its forthcoming
4 submission:

- 5 1. Item II in ECF 585—Identification of Cisco's Asserted Works.
- 6 2. Item III.G in ECF 585—Additional Unprotectable Aspects of the Asserted Works
7 (to the extent it does not overlap with issues raised in Item III.A – F).
- 8 3. Item IV in ECF 585—Scope of Copyright Protection.

1 Dated: October 31, 2016

Respectfully submitted,

2 /s/ Sean S. Pak

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25 *Attorneys for Plaintiff Cisco Systems, Inc.*

1 DATED: October 31, 2016

Respectfully submitted,

2 /s/ Brian L. Ferrall

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10 *Attorneys for Defendant Arista Networks, Inc.*

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13 **ATTORNEY ATTESTATION**

14 I hereby attest, pursuant to Local Rule 5-1(i)(3), that the concurrence in the filing of this
15 document has been obtained from the signatory indicated by the “conformed” signature (/s/) of
16 Sean S. Pak within this e-filed document.
17

18
19 /s/ Brian L. Ferrall